U.S. Senate
Republican Policy
Committee

Larry E. Craig, Chairman
Jade West, Staff Director

Legislative Notice

Editor, Judy Gorman Prinkey

No. 42A (Update) February 26, 1998

S. 1173 – Intermodal Surface Transportation Efficiency Act (ISTEA) of 1997

Calendar No. 188

Reported by the Committee on Environment and Public Works on October 1, 1997, with an amendment to change the name of the bill, by a vote of 18 to 0. S. Rept. 105-95.
S. 1173 was before the Senate last October but it was returned to the Calendar.

NOTEWORTHY

- The Senate today adopted a motion to proceed to S. 1173, known as the ISTEA bill, and by unanimous consent, no amendments are in order related to financing or funding until Wednesday, March 4. The U.C. also provided that the committee perfecting amendment offered when the bill was on the floor last October has been modified to be a substitute, thus allowing for amendments in two degrees.

- The bill, as reported, would authorize $145 billion over six years, beginning in FY 1998, but at press time, negotiations were ongoing on the effort to add money for highway spending while staying within the spending caps placed on discretionary spending (of which highway money is a part) in last year's budget agreement. A committee substitute or a floor amendment may later be offered to accommodate the result of these efforts.

- S. 1173 came before the Senate last October, but after a series of procedural votes and failed cloture attempts, was returned to the Calendar. The Senate and House instead passed by voice vote a short-term extension allowing states that exhausted their highway money to draw against the next year's spending (S. 1519). That extension expires May 1.

- Senator McConnell intends to offer an amendment to strike the provision that continues the 10 percent set-aside for minority small businesses under the "Disadvantaged Business Enterprise Program (sec. 1111). [See Other Views of Senator Sessions on p. 8.]

- Additional floor amendments will be offered by the chairmen of the Banking, Commerce, and Finance Committees for portions of the reauthorization under jurisdiction of those committees: Banking reported the reauthorization of the Mass Transit title; Finance reported the extension of the Highway Trust Fund excise taxes; and Commerce will offer a transportation safety title. [See Possible Amendments for details.]

HIGHLIGHTS

*[**Parliamentary** Note: Last year, after S. 1173 had been reported by the Environment and Public Works Committee, it was discovered the bill contained a technical violation of the Budget Act. During floor consideration in October, a committee perfecting amendment was then offered to correct this technical violation. The amendment would not make any substantive changes. Additionally, last October, the Majority Leader, in response to Democratic opposition to the bill's consideration, moved to recommit the bill, with instructions to report back forthwith, then offered a substitute amendment and a perfecting amendment, thus "filling the amendment tree." Under the February 26 unanimous consent agreement, the committee perfecting amendment that corrects the budget violation now has been incorporated into S. 1173, as reported, and that bill has been modified to be a substitute; further, all of the other amendments offered to "fill the tree" were withdrawn. And, so now, the bill before the Senate is amendable in two degrees.]*

S. 1173 (referred to as ISTEA II) is a comprehensive six-year measure to reauthorize the Federal-aid highway, highway safety, and other surface transportation programs, providing (as reported October 1, 1997) $145 billion over the six-year period. That amounts to a 20-percent nominal increase (5 percent in real dollars) over the previous authorization, ISTEA I, signed by President Bush in 1991. [See Background for details about goals and contents of 1991 ISTEA.]

- The bill changes the Trust Fund allocation formula (including a guarantee of 90-percent return of each State's annual contributions to the Highway account).

- S. 1173 combines the bridge program into the National Highway System (NHS) and combines the Interstate System into the Surface Transportation Program (STP). The bill also allows up to 50 percent of the Interstate Maintenance account to be used in the STP and NHS accounts. And, it increases flexibility for States and localities by including more than 20 measures to streamline and improve project approval and planning for surface transportation projects.

- The bill increases funding by 18 percent for the Congestion Mitigation and Air Quality Improvement Program (CMAQ) and expands eligibility to areas of "carbon dioxide and submarginal ozone nonattainment areas."

- It also authorizes NHS and STP moneys to be used for public passenger rail and bus terminals, "intelligent transportation systems," and other projects.

Summary of the State Allocation Changes

The bill replaces the apportionment formulas provided in 1991 ISTEA, which were based on each State's historical share of apportionments received during the period 1987 through 1991. Instead, this bill apportions funds based on **current** transportation measurements in each State.

Under the bill, each State will receive a minimum of 90 percent of its annual contributions to the Highway Account of the Highway Trust Fund, which is the same percentage as 1991 ISTEA, except that the percentage is based on 100 percent of a State's annual contributions to the Highway Trust Fund, rather than less than 80 percent of the total under 1991 ISTEA. The bill retains the 1 percent set-aside for metropolitan planning (consistent with current law). All factors used in the apportionment formulas are to be based on the latest available data and updated each year. These changes are contained in section 1102, and are explained below.

Interstate and National Highway System(INHS): The component includes the Interstate Maintenance account, the Interstate bridge account, and the National Highway System (NHS) account. Each State is guaranteed a minimum of one-half of one percent of total INHS program funding. The apportionment provided in the bill is as follows:

- Interstate Maintenance component: based on a State's share of total Interstate land miles and total Interstate vehicle miles traveled within the State.
- Interstate Bridge component: based on a State's share of total square footage of structurally deficient and functionally obsolete Interstate bridges within the State.
- National Highway System component: based on a State's share of —

  - total lane miles of principal arterial routes (excluding Interstate lane miles);
  - total vehicle miles traveled on principal arterials (excluding Interstate lane miles);
  - total square footage of deficient bridges on principal arterials (excluding Interstate routes);
  - diesel fuel use; and
  - total lane miles of principal arterials per capita.

Surface Transportation Program (STP) provisions also provide for a one-half of one percent minimum apportionment to each State. The STP funds are calculated as follows:

- total Federal aid highway lane miles;
- total vehicle miles traveled on Federal aid highways;

- total square footage of deficient bridges on Federal aid highways; and

- contributions into the Highway Account of the Highway Trust Fund.

Adjustments: In addition, this bill replaces the five apportionment adjustments provided in 1991 ISTEA with two adjustments, the "ISTEA transition" adjustment and the Minimum Guarantee.

- **ISTEA Transition** adjustment:

  - A maximum allocation: The annual increase in a State's total funding each year may not exceed the percentage (specified in section 1102, e.g., 45 percent in FY 1998) over its average 1991 ISTEA funding level.

  - A minimum allocation: A State's allocation: 1) may increase by at least the percentages provided in section 1102 (e.g., 7 percent in FY 1998) from its average of 1991 ISTEA funding (minus certain programs); or 2) a State's minimum allocation may be equal to its FY 1997 funds (minus Hold Harmless and demonstration projects).

- **Minimum Guarantee:**

  - Each State is guaranteed at least 90 percent of the total funds that it contributed to the Highway Account of the Highway Trust Fund. This is higher than current law, which only guarantees that a State receive its ratio (90 percent of its contribution times the ratio of approximately 80 percent of the ISTEA funds).

  - A special minimum share also applies for the 15 States listed in the table in the new section 105(a)(2) of title 23 (see page 31 of the bill).

Summary of Other Bill Provisions

(These highlights are provided by the Majority Staff of the Committee on Environment and Public Works)

Measures to Maximize Limited Federal Resources:

- To help bridge the gap between substantial infrastructure needs and limited resources, the bill provides new approaches to finance surface transportation.

- The bill refines and codifies the State Infrastructure Bank (SIBs) program.

- It establishes a new financing program that will provide $500 million to leverage a $10.6-billion federal line of credit to support new transportation projects.

- The bill increases funding for intelligent transportation systems (ITS) and other innovative technologies.

Highway Safety Provisions:

- Increases the funding set-aside for safety programs such as hazard elimination and railway-highway crossings to $680 million per year, a 56-percent increase over 1991 ISTEA levels.

- Provides performance-based incentive grants over six years to States that increase their annual seat belt usage rate or that surpass the national average seat belt usage rate.

- Establishes a new program to encourage states to enact laws and minimum penalties that target repeat drunk driving.

- Establishes a new border infrastructure and safety program to address safety concerns that have resulted from NAFTA.

Increases Environmental Provisions:

- To mitigate transportation's impact on air quality, the bill increases funding for the Congestion Mitigation and Air Quality (CMAQ) improvement program by an average of 18 percent over current levels.

- The bill provides a 25-percent increase in funds set aside for transportation enhancement activities, such as bicycle pedestrian facilities, and historic preservation.

- It establishes a new wetland restoration pilot program to help offset loss or degradation of wetlands resulting from federal-aid transportation projects.

- It increases funding for the popular National Scenic Byways and Recreational Trails programs.

- It makes natural habitat enhancement an eligible expense under the NHS and STP.

Program Streamlining and Flexibility Improvements:

- The bill consolidates five major program categories established in 1991 ISTEA to three categories by incorporating the Bridge program into the NHS, and the Interstate program into the STP.

- The bill expands the eligibility of National Highway System program funds to include Amtrak and other passenger rail terminals, publicly owned bus terminals, intelligent transportation systems, and magnetic levitation transportation systems.

- It expands the eligibility of STP funds to include Amtrak and other publicly owned passenger rail infrastructure and rail cars, ITS capital improvements, and magnetic levitation transportation systems.

- The bill includes more than 20 measures to streamline and improve project approval and planning for surface transportation projects.

Planning and Research:

- The bill preserves the strong metropolitan and statewide planning provisions of ISTEA.
- It retains the metropolitan planning set-aside.
- It establishes a new pilot program to integrate transportation planning and community preservation.
- It directs research funds to innovative purposes such as advanced composite materials and multimodal research.

Provisions for Diverse Transportation Needs in the Different Regions:

- The bill maintains a strong Federal Lands highway program, and allows other federal land management agencies to help contribute to federal lands highway projects.
- It creates a new cooperative federal lands program to help the so-called "orphan roads" that provide access to federal lands.
- It continues the value pricing pilot program to manage and minimize traffic in the nation's most congested areas.

BACKGROUND

1991 ISTEA

The original ISTEA became law on December 18, 1991. Its three principal goals were intermodalism, flexibility, and efficiency, intended to carry out the larger goal of a productive and effective national transportation system. The national intermodal transportation system established in ISTEA connects all forms of surface transportation in a unified and integrated manner. It includes the National Highway System, which consists of the Interstate System and those principal arterial roads deemed essential for national defense, intermodal transfer facilities, and international commerce and border crossings. It also provides improved access to ports and airports to increase national and global commerce. The 1991 ISTEA also sought to promote efficient movement of passengers and freight, increased productivity growth, reduced air pollution, and reduced traffic congestion.

National Highway System Designation Act of 1995

In 1995, President Clinton signed the National Highway System Designation Act. The NHS consists of the Interstate System and those principal arterial routes that have been deemed essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities and trade. Of these some 161,000 miles of roads, 75 percent are rural roads and 25 percent are urban roads.

ISTEA II

ISTEA II is intended to further develop, improve and maintain the National Highway System. ISTEA II will dedicate about 50 percent of the total annual transportation funds provided in this bill to the maintenance and development of this premier transportation network. This total funding is an increase from 1991 ISTEA in which 40 percent was dedicated to the National Highway System.

According to the Committee Report, ISTEA II continues the transportation policy of the United States "to develop a National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the Nation to compete in the global economy, and will move people and goods in an energy efficient manner."

COST

Budget Authority

On October 7, 1997 (after the bill was reported), the Congressional Budget submitted its cost estimate for S. 1173: CBO estimates spending would total about $142 billion over the 1998-2003 period, and that the costs fall within the transportation budget function. Of the total amount, $131.6 billion would be discretionary outlays and $10.3 billion would be direct spending. Of the $131.6 billion, about $129 billion would come from contract authority, and $2.6 billion would come from amounts authorized to be appropriated by S. 1173 or already appropriated in prior years. Under the CBO baseline, direct spending outlays would total $8.3 billion over the 1998-2003 period and discretionary outlays from contract authority would total about $117 billion over the same period. A minor revenue loss is estimated: the JCT estimates that the new credit program would result in a revenue loss of $79 million over the six years.

Unfunded Mandates

The Committee evaluated the bill pursuant to the Unfunded Mandates Reform Act of 1995 (PL 104-4), and concluded that the bill imposes "no Federal intergovernmental unfunded mandates on State, local or tribal governments. . . or Federal private sector mandates."

Regulatory Impact

Finally, the Committee states that the regulatory impact of the bill "is expected to be minimal," noting that the only provision having a "significant" regulatory impact is section 1407. That section ensures that the testing standard for air bags will be based on the simultaneous use of air bags and manual seat belts. The Secretary of Transportation is directed to issue revised standards that are consistent with that section.

OTHER VIEWS

Senators Thomas, Sessions, Moynihan, and Lautenberg each filed additional views.

Senator Thomas generally praised the bill as an important first step to bringing an equitable return of tax dollars to Wyoming. He also praised the creation of the Cooperative Federal Lands Program to help Yellowstone and other National Parks meet their roadway repair needs.

Senator Sessions takes exception to the committee report language suggesting that the "Disadvantaged Business Enterprise Program," set forth in section 1111 of the bill, would pass the new constitutional test enunciated by the U.S. Supreme Court in *Adarand Constructors, Inc. v. Pena*, 115 S.Ct. 2097 (1995). Senator Sessions observes that the bill "simply reenacts without change the same statutory language that was invalidated in *Adarand Constructors.*" Since "this section is neither supported by a compelling governmental interest, nor [is it] narrowly tailored," he concludes, "I have no doubt but that this section is unconstitutional."

Senator Moynihan endorsed the statement of principles that were set out in the 1991 ISTEA, which were not altered by this bill. He included the 1991 principles verbatim in his Additional Views.

Senator Lautenberg supports a number of provisions in the bill, but indicated his disappointment that it "eliminates the national focus on bridges, does not adequately address infrastructure needs, and unfairly shortchanges certain states." He expressed his disappointment that the bill fails to meet the "basic test of sound policy and fairness" by not using its 20-percent authorization level increase over 1991 ISTEA to ensure that no State would have a cut in transportation funding below its level of the previous year.

ADMINISTRATION POSITION

A letter from Secretary Slater to Senators was anticipated but not available at press time. The Administration did issue its Statement of Administration Policy on October 8, 1997, expressing pleasure that S. 1173 was a six-year bill, and that "it addresses many of the President's priorities," but the policy statement offers a variety of concerns about amendments, including any attempt to strike the 10-percent minority small business set-asides included in the

Disadvantaged Business Enterprise Program [see Possible Amendments]. Other concerns about possible amendments include those that would weaken: uniform certification provision for highway projects; the National Environmental Policy Act; the Congestion Mitigation and Air Quality Improvement Program; the Clean Air Act; and safety provisions.

POSSIBLE AMENDMENTS

Note: Under the February 26 U.C. no amendments related to financing or funding will be in order until Wednesday, March 4, and so this list contains only known possible amendments on other issues.

McConnell. To bring the bill into compliance with *Adarand v. Pena*, by striking the Disadvantage Business Enterprise Program (section 1111), and replacing it with an Emerging Small Business Program that "will provide contracting opportunities for all small businesses — without regard to race, color, national origin, or gender."

Mack. To permit States to "opt out" of the Federal Highway program.

Inhofe. To allow CMAQ program (section 1123) funds to be used for new highway lane construction that is HOV-1 (Single Occupancy Vehicles).

Byrd. To mandate a study on drinking and driving, and to require states to adopt a blood alcohol content level of .08 to be eligible for federal funds under this bill.

Dorgan. To prohibit open containers of alcoholic beverages in vehicles.

Unknown. To place the Highway Trust Fund off-budget.

Banking Committee Amendment. [On October 8, 1997, the Banking Committee reported out S. 1271, its title to S. 1173, which is the Federal Transit Act of 1997, reauthorizing mass transit programs funded primarily through the Federal Mass Transit Account. The Committee approved a six-year, $35.7 billion reauthorization, which is a 13-percent increase over that portion of the 1991 funding bill. The title was reported by a 17-1 vote.] The bill — to be offered as a floor amendment —

- retains the current program structure, including the 40-percent funding split for New Starts, 40 percent for fixed guideway modernization, and 20 percent for the bus capital programs.

- retains the current apportionment formulas and set-asides, including the 5.5 percent allocation of formula funds for the rural program.

- expands the eligibility of funding as "capital projects" the following: preventive maintenance, intelligent transportation systems, transit equipment leasing, and joint development activities. The bill also extends the flexibility to use urbanized area formula funding for either operating or capital assistance (currently only available to areas with under 50,000 population) to areas up to 200,000 population. Additionally, funds are provided for Statewide Planning.

- creates a new "clean fuels formula grant program," with an annual funding authorization of $200 million. This voluntary program will assist transit systems in purchasing low emissions buses and related equipment, constructing fueling and garage facilities for alternative-fuel vehicles, and assisting in the utilization of biodiesel fuel.

- authorizes a $100 million per year assistance program to help welfare recipients and other low-income individuals get to and from jobs; 60 percent of the grants must go to projects in large urbanized areas, 20 percent must go to projects in non-urbanized areas, and 20 percent to projects in small urbanized areas. The authorization is for money from the General Fund (not the Highway Trust Fund) and is subject to a 50/50 State match.

Commerce Committee Amendment. [On October 23, 1997, the Commerce Committee reported out its transportation safety title to S. 1173, which would provide more than $1.1 billion over the next six years to safety programs.] The bill includes the following:

- **Highway Safety.** The bill reauthorizes various grant programs administered by the National Highway Traffic Safety Administration (NHTSA). These grant programs would provide over $1.1 billion to the states over the next six years;

- **Hazardous Materials Transportation.** The bill reauthorizes funding and strengthens and improves programs to ensure the safe transportation of hazardous materials. It would authorize DOT inspectors to open and examine the contents of packages suspected of containing hazardous materials and notify the shipper before the package could continue. It also would expand hazardous materials training access by allowing states and Indian tribes to use a portion of their grants to help train small businesses in complying with hazardous materials shipment procedures. The Transportation Secretary is authorized to issue emergency orders if it is determined an unsafe condition poses an imminent hazard.

- **Comprehensive One-Call Notification.** The bill incorporates the provisions of S. 1115, introduced by Senators Lott, Daschle and others on July 31, 1997. S. 1115 would promote a national effort to encourage states to strengthen their laws that protect underground pipelines, telecommunication cables, and other infrastructure from excavation damage.

- **Motor Carrier Vehicle Safety.** This measure reauthorizes the Motor Carrier Safety Assistance Program (MCSAP) which provides funding to the states for commercial driver and vehicle safety inspections, traffic enforcement, compliance reviews and safety data collection. It also authorizes a performance-based approach to be implemented for the

MCSAP by 2000, removing many of the prescriptive requirements of the program. Several other important truck and bus safety enhancement provisions are included. It extends the Secretary's safety jurisdiction to intrastate trips made by interstate carriers and permits the Secretary to contract with private entities to conduct inspections and investigations to ensure compliance with Federal Motor Carrier Safety Regulations.

The bill further strengthens safety oversight by extending safety regulations such as commercial drivers licensing and drug and alcohol testing requirements to for-hire passenger vans. It also permits the Secretary to order any unsafe carrier to cease operations. Additionally, the bill includes a number of provisions designed to promote timely and accurate exchange of carrier and driver safety records. It authorizes comprehensive information systems and strategic safety initiatives to support motor carrier regulatory and enforcement activities as requested by the Administration. It establishes a pilot program to facilitate the exchange of accurate driver records data history.

- **Rail and Mass Transportation Safety.** The bill provides for criminal sanctions in cases of violent attacks against railroads, their employees, and passengers. These stronger criminal sanctions are similar to penalties which currently cover attacks against vessels, airlines, motor carriers, and pipelines.

- **Sportfishing and Boating Safety.** Along with Finance Committee extensions of the motorboat fuel, fishing equipment excise, and other tax and trust fund authorities, it reauthorizes the Wallop-Breaux boating safety and sportfish restoration programs which are funded directly from these revenues. It ensures state boating safety programs receive a higher level of funding more proportionate to the amount of motorboat fuel taxes paid.

Additionally, the bill reauthorizes the Clean Vessel Act (funded through the Wallop-Breaux program's trust fund) which provides funds to the states for vessel sanitation pump-out programs, a new state boating infrastructure improvement program, and boating safety programs. It creates a new national outreach and communications program to help increase safe boating and fishing and increases funding available to states for boating infrastructure and aquatic resources education projects.

Finance Committee Amendment. [On October 1, 1997, the Finance Committee reported out by voice vote its title to S. 1173, which extends for six years the existing transportation taxes and tax credits.] This amendment includes the following changes:

- a 10-year extension of the ethanol tax exemption which, instead of expiring in 2000, would phase down from 5.4 cents a gallon to 5.1 cents a gallon by 2005;

- repeal of the $1.25-per-gallon tax on diesel fuel used by trains; and

- an increase in the tax exemption for employer-provided transit passes from $65 a month to $100 per month, beginning in 2003.

Staff Contact: Judy Myers, 224-2946